

Chapter 81

2005 EDITION

Tender and Receipts; Choice of Law for Contracts

	TENDER AND RECEIPTS		(Rules Governing Form of Contract, Capacity to Contract and Consent)
81.010	Effect of unaccepted offer in writing to pay or deliver	81.110	Validity of form
81.020	Objection to tender	81.112	Capacity to contract
81.030	Receipt for paying money or delivering instruments or property	81.115	Consent
	CHOICE OF LAW FOR CONTRACTS		(Choice of Law Made by Parties)
	(Definitions)	81.120	Choice of law made by parties
81.100	Definitions for ORS 81.100 to 81.135	81.125	Limitations on choice of law by parties
	(Applicability)		(Law Applicable in Absence of Effective Choice by Parties)
81.102	Applicability	81.130	General rule
	(Contracts Governed by Oregon Law)		(Presumptive Rules)
81.105	Specific types of contracts governed by Oregon law	81.135	Presumptive rules for specific types of contracts

COMMERCIAL TRANSACTIONS

TENDER AND RECEIPTS

81.101 Effect of unaccepted offer in writing to pay or deliver. An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

81.102 Objection to tender. The person to whom a tender is made shall at that time specify any objection the person may have to the money, instrument or property or the person shall be deemed to have waived it; and if the objection is to the amount of money, the terms of the instrument or the amount or kind of property, the person must specify the amount, terms or kind which the person requires or be precluded from objecting afterwards.

81.103 Receipt for paying money or delivering instruments or property. Whoever pays money or delivers an instrument or property is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

CHOICE OF LAW FOR CONTRACTS**(Definitions)**

81.100 Definitions for ORS 81.100 to 81.135. For the purposes of ORS 81.100 to 81.135:

(1) "Law" means any rule of general legal applicability adopted by a state, whether that rule is domestic or foreign and whether derived from international law, a constitution, statute, other publicly adopted measure or published judicial precedent. Except for references to the law of Oregon, "law" does not include rules governing choice of law.

(2) "State" means the United States, any state of the United States, any territory, possession or other jurisdiction of the United States, any Indian tribe, other Native American group or Native Hawaiian group that is recognized by federal law or formally acknowledged by a state of the United States, and any foreign country, including any territorial subdivision or other entity with its own system of laws. [2001 c.164 §1]

(Applicability)

81.102 Applicability. ORS 81.100 to 81.135 govern the choice of law applicable to any contract, or part of a contract, when a choice between the laws of different states is at issue. ORS 81.100 to 81.135 do not apply if another Oregon statute expressly designates the law applicable to the contract or

part of a contract. ORS 81.100 to 81.135 do not apply to any contract in which one of the parties is a financial institution, as defined by 15 U.S.C. 6827, as in effect on January 1, 2002. [2001 c.164 §2]

(Contracts Governed by Oregon Law)

81.105 Specific types of contracts governed by Oregon law. Notwithstanding any other provision of ORS 81.100 to 81.135, but subject to the limitations on applicability imposed by ORS 81.102, the law of Oregon applies to the following contracts:

(1) A contract for services to be rendered in Oregon, or for goods to be delivered in Oregon, if Oregon or any of its agencies or subdivisions is a party to the contract. The application of Oregon's law pursuant to this subsection may be waived by a person authorized by Oregon's law to make the waiver.

(2) A contract for construction work to be performed primarily in Oregon.

(3) A contract of employment for services to be rendered primarily in Oregon by a resident of Oregon.

(4)(a) A consumer contract, if:

(A) The consumer is a resident of Oregon at the time of contracting; and

(B) The consumer's assent to the contract is obtained in Oregon, or the consumer is induced to enter into the contract in substantial measure by an invitation or advertisement in Oregon.

(b) For the purposes of this subsection, a consumer contract is a contract for the supply of goods or services that are designed primarily for personal, familial or household use. [2001 c.164 §3]

(Rules Governing Form of Contract, Capacity to Contract and Consent)

81.110 Validity of form. A contract is valid as to form if the contract meets the requirements prescribed either by the law chosen by the parties under ORS 81.120 and 81.125, the law applicable under ORS 81.105, 81.130 or 81.135, or the law of the state from which any party or the party's agent has assented to the contract unless that state has no other connection to the parties or the transaction. [2001 c.164 §4]

81.112 Capacity to contract. (1) A party has the capacity to enter into a contract if the party has that capacity under the law of the state in which the party resides or the law applicable to this issue under ORS 81.105, 81.130 or 81.135.

(2) A party that lacks capacity to enter into a contract under the law of the state in

which the party resides may assert that incapacity against a party that knew or should have known of the incapacity at the time the parties entered into the contract. If a party establishes lack of capacity in the manner provided by this subsection, the consequences of the party's incapacity are governed by the law of the state in which the incapable party resides. [2001 c.164 §5]

81.115 Consent. (1) A party has consented to a contract if the law applicable under ORS 81.105, 81.130 or 81.135 so provides.

(2) In a consumer contract or employment contract, the consumer or employee whose assent to a contract was obtained in the state of the party's residence, or whose conduct leading to the contract was primarily confined to that state, may invoke the law of that state to establish that the party did not consent to the contract or that the consent was not valid by reason of fraud or duress. [2001 c.164 §6]

(Choice of Law Made by Parties)

81.120 Choice of law made by parties.

(1) Except as specifically provided by ORS 81.105, 81.110, 81.112, 81.115 or 81.125, the contractual rights and duties of the parties are governed by the law or laws that the parties have chosen. The choice of law may extend to the entire contract or to part of a contract.

(2) The choice of law must be express or clearly demonstrated from the terms of the contract. In a standard-form contract drafted primarily by only one of the parties, any choice of law must be express and conspicuous.

(3) The choice of law may be made or modified after the parties enter into the contract. Any choice of law made or modified after the parties enter into the contract must be by express agreement.

(4) Unless the parties provide otherwise, a choice of law or modification of that choice operates retrospectively to the time the parties entered into the contract. Retrospective operation under the provisions of this subsection may not prejudice the rights of third parties. [2001 c.164 §7]

81.125 Limitations on choice of law by parties. (1) The law chosen by the parties pursuant to ORS 81.120 does not apply to the extent that its application would:

(a) Require a party to perform an act prohibited by the law of the state where the act is to be performed under the contract;

(b) Prohibit a party from performing an act required by the law of the state where it is to be performed under the contract; or

(c) Contravene an established fundamental policy embodied in the law that would otherwise govern the issue in dispute under ORS 81.130.

(2) For purposes of subsection (1)(c) of this section, an established policy is fundamental only if the policy reflects objectives or gives effect to essential public or societal institutions beyond the allocation of rights and obligations of parties to a contract at issue. [2001 c.164 §8]

(Law Applicable in Absence of Effective Choice by Parties)

81.130 General rule. To the extent that an effective choice of law has not been made by the parties pursuant to ORS 81.120 or 81.125, or is not prescribed by ORS 81.105, 81.110, 81.112, 81.115 or 81.135, the rights and duties of the parties with regard to an issue in a contract are governed by the law, in light of the multistate elements of the contract, that is the most appropriate for a resolution of that issue. The most appropriate law is determined by:

(1) Identifying the states that have a relevant connection with the transaction or the parties, such as the place of negotiation, making, performance or subject matter of the contract, or the domicile, habitual residence or pertinent place of business of a party;

(2) Identifying the policies underlying any apparently conflicting laws of these states that are relevant to the issue; and

(3) Evaluating the relative strength and pertinence of these policies in:

(a) Meeting the needs and giving effect to the policies of the interstate and international systems; and

(b) Facilitating the planning of transactions, protecting a party from undue imposition by another party, giving effect to justified expectations of the parties concerning which state's law applies to the issue and minimizing adverse effects on strong legal policies of other states. [2001 c.164 §9]

(Presumptive Rules)

81.135 Presumptive rules for specific types of contracts. (1) To the extent that an effective choice of law has not been made by the parties pursuant to ORS 81.120 or 81.125, or is not prescribed by ORS 81.105, 81.110, 81.112 or 81.115, contracts described in subsection (2) of this section are governed by the law of the state specified in subsection (2) of this section unless a party demonstrates that the application of that law would

be clearly inappropriate under the principles of ORS 81.130.

(2)(a) Contracts involving the occupancy of real property, the land use of property or the recording of interests in real property are governed by the law of the state where the property is situated.

(b) Contracts for personal services are governed by the law of the state where the services are to be primarily rendered pursuant to the contract.

(c) Contracts for franchises, as defined in ORS 650.005, except for licensing clauses in such contracts, are governed by the law of the state where the franchise is to operate pursuant to the contract.

(d) Licensing contracts and licensing clauses in contracts for franchises, as defined in ORS 650.005, are governed by the law of the state where the licensor has its place of business or residence with the closest connection to the transactions between the parties. For purposes of this subsection, "licensing" means a grant of a privilege, created by contract, that allows one party, the licensee, to use the property or right of another party, the licensor.

(e) Agency contracts are governed by the law of the state where the agent's duties are to be primarily performed. [2001 c.164 §10]

COMMERCIAL TRANSACTIONS
